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Human right to safe drinking water and sanitation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the present report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, in accordance with Human Rights Council resolutions 16/2 and 21/2.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation

Summary

The Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, submits the present report to the General Assembly in accordance with Human Rights Council resolution 24/18. The report provides an overview of the human rights framework for water, sanitation and hygiene, describing the relevant human rights standards and principles that serve to assess different levels and types of service. It continues with an assessment of different types of service through the lens of the human rights framework.

The categories considered for both water and sanitation are connections to a piped network, communal or shared facilities and individual on-site solutions. The report considers these types of services in conjunction with different management models, including utilities; small-scale service providers, with or without a mandate from the State; and self-supply. The realization of the human rights to water and sanitation is influenced by the way in which these various types of services are delivered and the extent to which the State has oversight of the service provided. The report situates this human rights analysis of types of services in the context of State's obligations to progressively realize human rights, focusing particularly on prioritization. Finally, the report discusses the implications for monitoring.

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I. Introduction

1. Realizing the human rights to water and sanitation depends on a combination of various factors. On a national level, these factors include appropriate policies, programmes and planning that reflect a long-term vision to ensure the realization of these rights. Implementation of these policies, programmes and plans includes developing appropriate institutions, financing, regulation and the capacity of local authorities and other actors, as well as the selection, implementation and management of technical solutions. Measures meant to ensure access to water, sanitation and appropriate hygiene practices occur in a variety of contexts that strongly influence how human rights can be realized. Particular political-institutional contexts have a significant impact on levels of support provided for water, sanitation and hygiene services and the sustainability of access; physical characteristics (water availability, geological, topographical and territorial aspects) are relevant for identifying the most appropriate technologies; economic context influences the implementation capacity of the local institutions and the economic sustainability of systems. Other important influences range from demographic characteristics to gender relations and the socio-cultural context.

2. This report aims to discuss to what extent different types of water, sanitation and hygiene services, combined with their diverse management models, comply with the human rights to water and sanitation. It would be simplistic to isolate this discussion from the context in which certain technologies and management options are applied, and to draw any conclusive generalizations. However, the report seeks to highlight the potential benefits and limitations of each type of service and the resulting concerns for the realization of human rights. Governing bodies and service providers may extract lessons from this analysis for their respective planning, assisting them in developing strategies for the progressive realization of the human rights to water and sanitation. Likewise, these lessons may also aid those bodies responsible for monitoring service provision, especially to identify human rights concerns in access to these services.

3. The report considers three types of services (connections to a piped network, communal and shared facilities and individual on-site solutions) in conjunction with different management models, including utilities; small-scale service providers, with or without a mandate from the State; and self-supply. The realization of the human rights to water and sanitation is influenced by the way in which these different types of service are delivered and the extent to which the State has a role of oversight of the service provided. The report situates this human rights analysis of different types of services in the context of States' obligations to progressively realize human rights, focussing particularly on prioritization.

II. Human rights framework for water, sanitation and hygiene

4. Resolution 24/18 of the Human Rights Council recognized "that the human right to safe drinking water and sanitation entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure and acceptable, and that provides privacy and ensures dignity." Building on this definition, the earlier work of the Committee on Economic, Social and Cultural Rights (see

E/C.12/2002/11 and A/HRC/12/24) and of the former Special Rapporteur (see A/HRC/12/24), this section seeks to clarify the meaning of human rights standards and principles for sanitation, water and hygiene, in the light of different types of services.

A. Human rights standards for sanitation

5. The human right to sanitation requires services to be available, safe, acceptable, accessible and affordable. The former Special Rapporteur defined sanitation as a "system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity" (see A/HRC/12/24, para. 63).

6. Beyond an individual's access to a latrine or toilet, sanitation also has an important public health dimension. Adequate sanitation not only guarantees an individual's access, but also protects the human rights of others, including their rights to life, health, water and a healthy environment, by ensuring that the environment in which they live is not contaminated with faeces (see A/68/264).

1. Availability

7. A sufficient number of sanitation facilities has to be available. The necessary structures also have to be put in place to ensure the availability of services, such as policies programmes, institutions and sufficient personnel able to construct, maintain and manage the delivery of services.

2. Accessibility

8. Sanitation facilities must be physically accessible for everyone within or in the immediate vicinity of each household, health or educational institution, public institutions and places, and the workplace (see A/HRC/12/24, para. 75). Sanitation facilities should be designed in a way that enables all users to physically access and use them, including, especially those with special access needs, such as children, persons with disabilities, elderly persons, pregnant women, parents accompanying children, chronically ill people and those accompanying them. Considering the needs of these individuals has implications for the entrance size, the interior space, handrails or other support mechanisms and the position of defecation, as well as other aspects.

9. Human rights require that where sanitation facilities are shared, including at the work place or health and other public institutions, there be a sufficient number of sanitation facilities with associated services to ensure that waiting times are not unreasonably long. Sanitation facilities must be reliably accessible to satisfy all needs throughout day and night, whether at home, the workplace or in public institutions.

10. Where the sanitation facility is not located on the premises, the path leading to it should be secure and convenient for all users. The risk of attack or assault from animals or people, particularly for women and children, must be minimized. Public or shared latrines in residential areas must be safely accessible in the night, as well

as in the day. Any form of sanitation for domestic use that is situated outside the premises should only be a short-term measure. Focussed efforts must be made to replace these with adequate sanitation within the premises.

3. Quality and safety

11. Human rights require that sanitation facilities must be hygienically safe to use and easy to clean and maintain. They must effectively prevent human and animal, including insect, contact with human excreta to avert the spread of disease. Manual emptying of pit latrines or septic tanks should be avoided as it is considered unsafe (as well as culturally unacceptable in many places, which may lead to the stigmatization of those burdened with this task), meaning that mechanized alternatives that effectively prevent direct contact with human excreta should be used. Regular cleaning, emptying of pits or other places that collect human excreta and maintenance are essential for ensuring the sustainability of sanitation facilities and continued access. Sanitation facilities must also be technically safe to use, which means that the superstructure is stable and the floor and hole to the pit are designed in a way that reduces the risk of accidents.

4. Affordability

12. Use of sanitation facilities and services must be available at a price that is affordable to all people (see A/HRC/30/39). This must include all associated costs, ranging from regular tariffs to connection fees in the case of networked provision, to costs of on-site solutions such as the construction or maintenance of pit latrines and septic tanks. There are often costs that go unrecognized when planning for technical solutions. For example, on-site technologies may require regular maintenance, including the emptying of pits or septic tanks and the sludge management. Sanitation based on a flush toilet generally requires payment for additional quantities of water. Paying for these services must not limit people's capacity to acquire other basic goods and services guaranteed by human rights, such as the right to food, housing, health and education. Affordability does not necessarily require services to be provided free of charge. People are generally expected to contribute according to their means. However, when people are unable, for reasons beyond their control, to access sanitation through their own means, the State is obliged to find solutions for ensuring their access to sanitation free of charge.

5. Acceptability, privacy and dignity

13. Sanitation facilities and services must be culturally acceptable. Personal sanitation is a highly sensitive issue across regions and cultures and differing perspectives about which sanitation solutions are acceptable must be taken into account regarding the design, positioning and conditions for use of sanitation facilities. In most cultures, toilets must be constructed so as to ensure privacy and dignity. Acceptability often requires separate facilities for women and men in public places, and for girls and boys in schools.

B. Human rights standards for water

14. The human right to water requires services to be available, safe, acceptable, accessible and affordable.

1. Availability

15. Availability refers to the quantity of safe water available for domestic and personal use, and the necessary protection of water resources. There must be a sufficient quantity of water available to fulfil individuals' and households' requirements for drinking and personal hygiene, for personal and domestic uses, which includes cooking, preparation of food, laundry and cleaning (see E/C.12/2002/11, para. 12). As individual household needs vary depending on circumstance and context, including age, occupation, ill-health and climatic conditions, an exact quantity necessary to fulfil the above requirements cannot be given. The World Health Organization (WHO) provides broad guidance on the relevant amounts of water to promote good hygiene and protect public health,[1] but each State must assess the relevant amount for given circumstances. Beyond this, availability also relates to the necessary structures to ensure service provision.

2. Accessibility

16. Water must be accessible in the household or its immediate vicinity, as well as at other places where an individual spends significant amounts of time, including at the workplace, in schools, health centres and detention centres. To achieve an adequate standard of living, gain full health benefits and ensure that the time spent collecting water is minimal, everyone should have access to a tap in the home. In those cases where water is not accessible on the premises, the route to fetch water and the facility itself must be safe for all users, and the method of extracting water must be usable by all. Further, the supply must be reliable and continuous, so that individuals can collect water at the times that they require.[2]

3. Quality

17. The water used by households and individuals for domestic and personal uses must be of sufficient quality to protect their health (see E/C.12/2002/11, para. 12). Pollution of water by any means, including by agriculture, industry and wastewater must therefore be prevented. WHO has published guidelines for drinking water quality, which define relevant limits for a wide range of potentially harmful substances to prevent "significant risk to health over a lifetime of consumption".[3]

4. Affordability

18. Water must be affordable to individuals for all personal and domestic uses (see A/HRC/30/39). In considering the affordability of water services, States must consider all aspects of access, including tariffs, connection charges, storage and household treatment of water, where necessary. The amount paid for water must not prevent people from accessing other essential goods and services that are guaranteed by other human rights, such as medicines, rent, other-related housing fees and education fees. Water does not have to be available for free other than in situations where people are not able to pay for the service themselves.

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[1] See Guy Howard and Jamie Bartram, *Domestic Water Quantity, Service, Level and Health*, World Health Organization (2003).

[2] This issue also links to quality, as household water storage bears risks in terms of water quality and health.

[3] World Health Organization, *Guidelines for Drinking Water Quality*, 4th ed. (Geneva, World Health Organization, 2011).

5. Acceptability

19. Water must be of an acceptable colour, odour and taste, beyond the issues of quality mentioned above (see E/C.12/2002/11, para. 12).

C. Human rights standards for hygiene

20. Certain human rights obligations related to hygiene can be inferred from the rights to water and sanitation, as well as the right to health, the right to food, the right to privacy, human dignity and other human rights. This report focuses on the human rights obligations related to hand-washing at appropriate times, menstrual hygiene, management of child faeces and domestic food hygiene. A working group created under WHO and the United Nations Children's Fund (UNICEF) Joint Monitoring Programme for Water Supply and Sanitation explained that "... various components are considered essential to menstrual hygiene management. The first is that women and adolescent girls use clean materials to absorb or collect menstrual blood, and are able to change them in privacy as often as necessary for the duration of their menstrual period. It also involves using soap and water for washing the body as required, and having access to safe and convenient facilities to dispose of used menstrual management materials. Further, women and girls need access to basic information about the menstrual cycle and how to manage it with dignity and without discomfort or fear."[4]

1. Availability

21. Facilities to meet hygiene requirements must be available wherever there are toilets or latrines, where water is stored and where food is prepared and served. These are required particularly for hand-washing, menstrual hygiene, the management of children's faeces and the preparation and consumption of food and drink.

2. Accessibility

22. Hygiene facilities must be physically accessible for everyone within or in the immediate vicinity of each household, health or educational institution, public institutions and places, and the workplace. Ideally, they should be located adjacent to toilets. Women, persons with disabilities, children and others may have particular hygiene requirements. Access to hygiene facilities should be secure and convenient for all users, including children, elderly persons, persons with disabilities, women, including pregnant women, and chronically ill people. Moreover, hygiene facilities need to be accessible on a reliable and continuous basis, at home, work and school, and in public places, as to satisfy all needs throughout the day.

3. Quality and safety

23. Hygiene facilities, such as hand-washing stations or disposal units for sanitary products, must be safe to use and easy to clean. Sanitation facilities must ensure

[4] See WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, "WASH Post-2015: proposed targets and indicators for drinking-water, sanitation and hygiene", fact sheet, available from www.wssinfo.org/fileadmin/user_upload/resources/post-2015-WASH-targets-factsheet-12pp.pdf.

access to safe water for hand washing, menstrual hygiene, and anal and genital cleansing. They must also include mechanisms for the hygienic disposal of menstrual products and nappies. Good hygiene practices require hygiene promotion and education to ensure good hand-washing, proper use of toilets and menstrual hygiene, encouraging individuals to prepare and consume food in a hygienic manner that respects the safety and well-being of others.

4. Affordability

24. Use of hygiene facilities and services must be available at a price that is affordable to all people. The main costs, other than for installation, are associated with supplying water, soap and cleaning products for hand-washing, food hygiene, home hygiene and washing clothes, and for sanitary napkins or other products required for menstrual hygiene. Paying for these services must not limit people's capacity to acquire other basic goods and services guaranteed by human rights, such as food, housing, health services and education. Assistance should be provided to households or individuals who are unable to afford soap and cleaning products, or sanitary products for women and girls.

5. Acceptability, privacy and dignity

25. Hygiene facilities and services must be culturally acceptable. Personal hygiene is a highly sensitive issue across regions and cultures. Differing perspectives on the acceptability of hygiene practices must be taken into account regarding the design, positioning and conditions of use for sanitation, hand-washing and menstrual hygiene facilities. Facilities should accommodate hygiene practices in specific cultures, such as anal and genital cleansing, and women's toilets must accommodate menstruation hygiene management needs, particularly with respect to privacy. Menstruation is taboo in many countries, which makes menstrual hygiene a major concern for the health and well-being of women, and particularly of girls, who may not have sufficient knowledge about managing menstruation to be able to develop good practices. Education is necessary at schools, for boys as well as girls, to start to address the social taboos associated with menstruation and menstrual hygiene.

D. Human rights principles

26. Apart from these substantive criteria, human rights principles provide vital guidance on how human rights must be realized and applied to particular types of services.

1. Non-discrimination and substantive equality

27. Equality and non-discrimination are the central tenet of human rights, and are linked under human rights law.[5] For individuals and groups to enjoy full equality, States must take all necessary steps to ensure substantive equality, which means preventing discrimination in both legislation and policies and in practice. The principle of non-discrimination is immediately binding for all levels and entities of a State, in all spheres and at all times.

[5] See A/RES/217 A (III), art. 2; A/RES/2200 A (XXI), annex, art. 2; and E/C.12/GC/20.

28. Achieving equality does not mean that everyone should be treated identically. With respect to water, sanitation and hygiene, human rights requires that everyone has equal access to services; but this does not mean that everyone must enjoy the same type of service, such as flush toilets, as these are not appropriate in all circumstances and contexts. Also some individuals or groups have specific needs such as menstrual hygiene for women and girls. However, States may need to adopt affirmative measures, giving preference to certain groups and individuals in order to redress past discrimination. Social, cultural, economic and political inequalities perpetuate social exclusion, and this needs to be carefully considered in the development of water, sanitation and hygiene service delivery options (see E/C.12/2002/11, para. 17).

2. Participation

29. Participation must be active, free and meaningful to comply with the human rights to water and sanitation. Individuals and communities must be given the opportunity to participate in the choice of the type of service and management model. Participation includes ensuring that people have the opportunity to engage actively, by holding meetings at times and in places where all individuals have access and feel comfortable in giving their opinion. In many cases, language and levels of literacy need to be considered.

30. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), an instrument providing useful guidance on participation even beyond its regional scope, requires that public bodies take due account of the outcome of public participation and notify the public of the decision made, giving reasons and spelling out what was considered in reaching the decision.[6]

31. People must be able to voice their concerns freely. Those who are otherwise discriminated against or stigmatized may have particular difficulties in making their opinion heard as concerns the types of service that are acceptable to them. They must also be given the chance to present their opinions and influence decision-making. For decisions on types of services, women and girls' participation is essential.

3. Access to information

32. Participation in decision-making regarding the type of service is only effective if there is access to sufficient and accurate information, which is in itself a human right. To be able to make informed choices, communities and individuals must have access to adequate information about the different technologies' long-term costs, sustainability and related health and environmental concerns.

33. People need to have access to information:

- For democratic engagement, such as through community councils and participatory budgeting;
- For active, free and meaningful participation in the design of policies and planning on water, sanitation and hygiene-related issues;

[6] See United Nations, *Treaty Series*, vol. 2161, No. 37770, art. 6, para. 9.

- To monitor their representatives and hold them accountable;
- To make decisions about their daily use of water, sanitation and hygiene services.

34. Poor and marginalized individuals and communities are often the passive objects of policymaking, excluded from public debate, unable to participate in political life and prevented from influencing the decisions that have a profound effect on their everyday lives. Access to information helps balance the unequal power dynamic that exists between marginalized individuals and groups and the State and other bodies such as service providers.

4. Accountability

35. States have an obligation to realize the human rights to water and sanitation, and can be held accountable for this. Monitoring is essential to assessing whether States and other actors, including service providers, are complying with the human rights to water and sanitation, and is a prerequisite for holding them to account for violations. This requires monitoring that goes beyond physical services, but also focuses on inequalities in access to services within countries, cities and settlements. Where there are inequalities in access, or the State is not progressively realizing the rights to water and sanitation, using maximum available resources, or otherwise not meeting its human rights obligations, people must be able to gain access to justice. States have an obligation to put appropriate accountability mechanisms in place and to ensure access to the courts as a last resort.

5. Sustainability

36. Human rights law requires that the progressive realization of human rights is achieved in a sustainable manner. Improvements to services and facilities must be maintained such that there is no slippage and retrogression is avoided. In the context of service levels, this demands that services are reliable and continuously functional. Above all, today's services must not limit future generations from accessing water, sanitation and hygiene services. The most appropriate technology must be chosen with due attention to immediate costs (for example, those related to construction), long-term costs (for example, those related to operation and maintenance) and the availability of water and financial resources.

III. Assessment of key types of service through the lens of human rights

37. To facilitate the discussion on the appropriateness of the different types of service, this section discusses technologies, management models and regulatory frameworks for water, sanitation and hygiene. This discussion includes a brief assessment of the characteristics and factors of each type of service that can either favour or hinder their compliance with the human rights to water and sanitation. The context and policy environment in which a particular technology is used strongly influences whether the service complies with human rights standards and principles. This section assesses the relevant factors that are necessary to ensure the realization of the human rights to water and sanitation depending on the type of service by considering how technologies and management models for service provision interact.

38. The present report considers three main types of services:

- Connection to a piped network
- Shared or communal facilities
- Individual on-site solutions.

It also considers four broad categories of management models:

- Utilities (large scale, formal entities that provide predominantly piped water and sanitation systems)
- Small-scale, non-governmental (NGO) or community-run service providers that are recognized or even mandated by the State
- Small-scale, NGO or community-run providers that are not mandated by the State and are largely unregulated
- Self-supply.

39. Any of these systems may be owned and operated by public or private entities, and working for-profit or not-for-profit. These aspects of service management models will not be considered in the report (see A/HRC/15/31).

40. Utilities, as the first category considered, may be managed poorly or well, but they will generally have a formal structure and will be required to meet particular standards in service provision. There will generally be State-mandated or independent oversight of a utility's activities, whether or not this is effective. This includes regulatory bodies, which may set standards and targets and monitor issues such as quality and tariff-setting.

41. In some countries, small-scale-, NGO- or community-managed service providers are part of the formal institutional arrangement for ensuring access to water, sanitation and hygiene. This may be the case particularly in rural areas, where it may not be realistic to deliver piped services to individuals and households in the short term. These small-scale providers are usually recognized by the State and may receive some form of regulatory oversight.

42. In other countries and other contexts, informal providers exist outside of State oversight, often in response to the absence of more formal solutions for adequate services. These providers tend only to be accountable to consumers insofar as the latter are able to choose between existing providers based on the criteria of availability, price and quality of service. Small-scale, NGO or community-managed providers deliver a range of different water, sanitation and hygiene services, including piped supply, shared or public toilet blocks, water vendors, well construction, latrine construction and pit emptying services.

43. The final category of service delivery is self-supply. For sanitation, this is probably the most common form of access in rural areas and in many informal settlements, and is also widespread for households' access to water.

44. Bearing in mind this categorization of different management models, this section of the report discusses different types of services for ensuring access to water, sanitation and hygiene, their links to different management models and oversight capacities that contribute to the realization of the human rights to water and sanitation.

A. Sanitation

1. Connection to a piped network

45. Private household toilets linked to piped sewerage managed by a formal utility are often presented as the gold standard for sanitation. The historical development of sanitation in urban areas in the Global North largely explains the emergence of this technological conception.[7] Institutions such as schools, health-care centres and detention centres will generally be connected to a formal sewerage network where this is available.

46. Piped systems usually ensure accessibility, acceptability and convenience for the user, quality and privacy. The health benefits for those connected to a sewerage network are clear, as faeces and wastewater are transported away from the household in a way that avoids human contact. While the user has to clean the toilet and ensure that the flush mechanism works properly, all other aspects of maintenance and wastewater treatment are the responsibility of someone else. A regulatory framework and standards for piped systems are generally available, while these are not always effectively put in place and monitored.

47. There are, however, concerns from a human rights perspective. The construction of such systems may be technically difficult to install in and around existing buildings and infrastructure where urban settlements have not been adequately planned, such as in most informal settlements. In many developing countries, the sewerage network is only available in middle and high income areas. Leaving residents of low income areas and informal settlements without access to this service often entrenches inequalities.

48. Further, piped systems often raise affordability concerns for the State, the service provider and the user. Even where a sewerage system exists and all residents are physically able to connect to it, including in informal settlements, connection charges may prevent poorer households from making use of this service, unless appropriate systems are in place to ensure affordability.

49. Moreover, a flush toilet with a sewered connection requires considerably more water than other forms of sanitation, which can raise environmental and affordability concerns. Piped sewerage has also faced criticism from an ecological perspective, questioning whether it is the soundest solution to flush away excreta with large amounts of freshwater that become contaminated in the process.

50. Further challenges arise when wastewater management and treatment are neglected. In such instances, the users of toilets linked to networked sewerage systems obtain individual health benefits, but they may inflict negative impacts on others by contaminating the environment in which they live. From a health perspective, one community's sewage is more dangerous to external communities, as it potentially transmits different pathogens.[8] This will infringe people's human rights to water, health and a healthy environment and will also reinforce inequalities.

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[7] José Esteban Castro and Léo Heller, eds., *Water and Sanitation Services: Public Policy and Management* (London, Earthscan, 2009).

[8] See Léo Heller, "Who really benefits from environmental sanitation services in the cities: an intra-urban analysis in Betim, Brazil", *Environment and Urbanization*, vol. 11, No. 1 (1999).

51. An alternative sewerage system (often referred to as simplified, condominial or small-bore sewerage systems, owing to the smaller size of the pipes), can imply more affordable construction costs, but generally transfers its management from the State to the community and requires more user maintenance, which can be problematic in the long term. Small-scale, community-managed service providers may also construct piped sewerage systems. They will often be limited to a small community, providing sewerage service connected to a simplified wastewater treatment plant. While these can be very effective, without appropriate management and regulation there is a risk that the service is not constructed adequately, that the treatment plant is not properly maintained, is not affordable and does not provide a consistent and sustainable service.

2. Communal or shared facilities

52. This category includes public or communal toilet or latrine blocks and latrines privately shared between a few households. These may be managed by a utility, by small-scale or community providers or by the households concerned. Institutions such as schools, healthcare centres and detention centres generally use communal systems in the absence of a sewerage system, and may be either formally or informally provided.

53. Sanitation shared between a few households, where all residents know each other and maintenance and cleaning is shared, is a common form of access in many countries, particularly in sub-Saharan Africa.[9] This form of access can contribute to the realization of the human rights to water and sanitation, where the construction and maintenance of the toilet or latrine is adequate, and where everyone within the households has access to the toilet or latrine, regardless of their age, physical ability or status within the household. There may be particular concerns for persons with disabilities, children, older persons, people with a chronic illness (which may be stigmatized, such as HIV), renters or those who do not belong to the main household. In some cultures, menstruating women are not allowed to use a latrine shared by other people, and this problem may be compounded when the latrine is shared by several households (see A/67/270, para. 73).

54. Public or communal latrines are less likely to be well-managed than privately shared latrines. They also tend to be located at a greater distance from the home, raising concerns in terms of quality, hygiene and accessibility. One particular drawback of a communal service is a lack of privacy and an increased risk of violence or assault for people leaving the house, particularly at night. Women and children are particularly at risk of violence in such conditions. Challenges also exist in terms of ensuring hygiene in these types of facilities, in assigning responsibilities for operation, maintenance and cleaning and hence to ensure their sustainability.

55. Communal or shared sanitation options, especially between many households, should never be seen as an adequate long-term solution. However, in some contexts, they are a short- to medium-term solution, necessary owing to limited urban planning and insufficient resources. Where communal or shared latrines are used, States should take measures to ensure privacy, safety and hygiene, affordability and sustainability. They should also ensure that there is a plan with set targets to upgrade this form of sanitation to options that comply fully with the right to

[9] See Thilde Rheinländer et al., "Redefining shared sanitation", *Bulletin of World Health Organization*, Vol. 93 (2015).

sanitation within a fixed time-frame. Without this long-term commitment and planning, solutions that are considered to be short-term often end up being long-term solutions. Without suitable regulation, none of these services can be guaranteed to comply with human rights, for quality, affordability, safety or acceptability.

3. Individual on-site solutions

56. Individual households have various options for sanitation provision, many of which meet human rights standards in different contexts and circumstances, depending, among other aspects, on user engagement. These include pit latrines, ventilated improved pit latrines, septic tanks and different types of ecological sanitation, which are often based on the separation of faeces and urine, on limiting water use, and on the reuse of waste matter. Some options, such as hanging latrines and "flying toilets", are not acceptable under any circumstances, as they do not ensure safety and contribute to the contamination of the environment.

57. In rural areas, for example, pit latrines may be acceptable if they are well-constructed and emptied as necessary, or filled in and rebuilt elsewhere. Problems arise where these types of latrines are not well built, or risk contaminating the water table. Hygiene concerns will arise if these latrines are not regularly cleaned, which may be difficult where latrine slabs are poorly constructed.

58. In some countries, individual solutions are regulated by a State institution. For example, such regulatory bodies may define the necessary dimensions of a septic tank, the requirements for the construction of a pit or the minimum distance of a latrine from a water source or a water table to avoid contamination.

59. Even low-cost on-site solutions may still be unaffordable for people living in poverty, particularly owing to the associated maintenance costs such as pit-emptying. For those populations living on very low incomes, household-level latrines may be inadequate or unaffordable unless significant technical and financial support is provided. While there has been considerable debate about sanitation marketing techniques to encourage people to invest in sanitation, the reality is that without subsidies, many of these on-site solutions are not affordable for households facing extreme poverty.

60. As long as on-site sanitation facilities are constructed, maintained and managed according to human rights standards and principles, there is no dichotomy between human rights and self-supply. However, some of these solutions may be inadequate, especially in terms of cleaning, maintenance and sludge management, which can have strong negative impacts on human health and the environment. In some countries, the State may not recognize its obligation to ensure that self-supply solutions comply with human rights obligations and are appropriate and affordable. States need to put appropriate systems in place, including regulation and financial support for those who need it.

B. Water

1. Connection to a piped network

61. Treated water piped into the home is usually presented as the gold standard for access to water. Its emergence is also largely explained by the historical

development of water supply in urban areas in the Global North.[7] Institutions such as schools, health-care centres and detention centres are generally connected to a piped supply where this is available. Where water is provided by a formal service provider, it is expected that there will be standards and targets set, which can be regulated by an independent regulatory body. This is an essential aspect of formal service provision, even though effective implementation in practice is often lacking.

62. Clean and safe water available within the home will ensure the household's access to sufficient quantities of safe water resulting in optimal health outcomes and significant time savings in water collection times. It also eliminates the need for transportation and the risk of unsafe storage, reducing the risk of contamination of water supply and limiting the need for household water treatment.[10] Water piped into the home is more likely to be reliable and continuous compared to other delivery options.

63. Problems often arise with piped water supplies in terms of quality (where the water is not adequately treated) or with continuity, where limited water availability leads to rationing of water supplies. All too often, rationing will take place in poorer areas rather than in well-to-do areas. This creates a double inequality, as poorer households often lack the necessary resources to adequately store water, or find an acceptable alternative supply. A lack of continuity also puts the quality of the water at risk by increasing the chance of contaminated water entering the system. Where piped water is not safe to use, households must rely on household water treatment, which can be costly and may still be unsafe.

64. Piped services are often not available to rural households or to those living in informal settlements in urban areas. This represents a significant problem of inequality in access, as marginalized or disadvantaged people are generally excluded from accessing this type of service and rely on alternatives that are often of lower quality and accessibility and tend to cost more. Increasing the number of households with access to piped water within the home must be carefully planned, as this type of access invariably means that households will use more water than they will have used previously with a water source outside the home and measures need to be taken to ensure availability and affordability.

65. Environmental sustainability is a concern where there is not an adequate sanitation system to remove the water that is brought into a household. In urban areas, in particular, this can be a problem when water is piped into a settlement without adequate removal systems. Beyond the pollution of water bodies and the consequent impacts on health, stagnant and standing water can encourage the breeding of mosquitoes, including those responsible for spreading malaria, dengue and yellow fever.

2. Shared or communal water facilities

66. Technologies for shared or communal water provision may include water kiosks, standpipes, boreholes and wells often based in a settlement or village. These may be managed by a utility or by small-scale or community-run providers. Institutions such as schools, health-care centres and detention centres in settlements

[10] See UNICEF and WHO, *Progress on Sanitation and Drinking Water, 2015 Update and MDG Assessment*, in which multiple case studies demonstrated that "piped water supplies are generally less likely to be contaminated than other improved sources".

or areas without access to a piped supply may use a borehole or well that is available for their own use or for the use of the broader community, particularly where such a settlement does not have another reliable source of water.

67. Whether or not this type of service meets human rights criteria standards depends on multiple factors. Particular issues to consider are water quality, price, distance from the home, waiting times (where there are a number of households using the same source) and the appropriate transport to and storage within the home. Depending on the position of the facility relative to the home, households may not be able to collect the optimum amount of water to ensure good health. Even where water is safe at source, the transport of water to the home, and storage within the home may not be safe, and the necessary water treatment can be prohibitively expensive for households living in poverty. Further, there is seldom any assistance for using household water treatment methods to ensure that they are reliable, safe and sustainable. Similarly, they often do not have regular access to the necessary materials (for example, chlorine). Prices for water supplies may rise and fall according to water availability, putting the price of water out of reach for households on low-incomes in times of water scarcity.

68. Thus, while these informal shared or communal services may be providing service to millions of households, these services should be seen merely as interim solutions. States must adopt measures to either appropriately regulate them or replace them with systems that can be regulated and that meet the human rights standards. Where a State takes steps to provide formal service to areas formerly serviced only by informal providers, it is important that it ensures the affordability of formal services for the users in question.

3. Individual on-site solutions

69. Households may also have their own water supply from a private well or borehole. Private wells may not provide a regular or year-round supply of water, with seasonal dry periods being problematic in some regions. To ensure water quality, wells must be protected from animals and other sources of contamination. Wells in high-density urban areas are often at great risk of contamination. In some instances, a household will sell water to neighbours. Although this may be safe in some rural areas, there is seldom any regulation of water quality or affordability, or of construction and maintenance.

70. Rainwater harvesting is also a common household (or shared) solution. Again there can be issues with household water treatment and storage, and continuity of supply in areas with variable rain. Rainwater harvesting can be particularly useful as an additional source of water to complement other forms of supply. Other types of self-supply, such as the collection of surface water, seldom meet the standards and principles of the human rights to water and sanitation.

71. The category of individual on-site solutions also includes the provision of a household-level service by a well or borehole provided by a small-scale provider. Particular issues to consider include monitoring the proper construction, operation and maintenance of the borehole or well, in order to ensure that it is sustainable in terms of both technology and management.

C. Hygiene

72. Hygiene practices include hand-washing, personal hygiene, domestic hygiene, hygienic use and management of toilets or latrines, the hygienic disposal of child faeces, menstrual hygiene and food hygiene.

73. Hand-washing is often seen as the key aspect of hygiene. It requires both adequate quantities of water at necessary places (in the kitchen and bathroom) and critical times (after using the toilet, before preparing food and before eating), as well as soap (or an alternative, such as ash). In many households, both of these resources may be in short supply, for accessibility or affordability reasons. A typical example of a hand-washing station is a tap connected to piped water, but there are also other solutions, such as the "tippy tap", that are at least acceptable as an interim solution. As with all water use, it is essential that there be an adequate wastewater disposal system to prevent the local (and in some cases broader) environment from being flooded with excess water.

74. Many cultures use water for genital and anal cleansing, and again require sufficient quantities of water at the point of use. Water and cleaning materials are also required for keeping the toilet and surrounding area clean. Cleaning materials and disposal facilities are also necessary for managing child faeces hygienically.

75. Considerations of menstrual hygiene are particularly important for issues related to health, education and gender equality.[11] Facilities for menstrual hygiene management must include a system of disposal of sanitary materials and a place for washing reusable materials. Systems should be designed with the participation of users to make sure that they are relevant, appropriate and not liable to increase the stigmatization of girls and women during their periods. Cultural acceptability is essential to determine the type of technology used.

76. Generally, all of these services are provided through a household's own initiative, or through the initiative of the relevant institution. Where this is a State institution, whether a school, health centre or place of detention, there should be independent oversight to ensure that these services are adequate. Places where women are detained must ensure that women have access to the necessary facilities and materials for menstrual hygiene management.

IV. Progressive realization

A. Achieving universal access

77. The human rights criteria of availability, safety, acceptability, accessibility and affordability provide a standard against which solutions for water, sanitation and hygiene can be assessed. They stipulate the standard to be achieved. By themselves, however, they cannot be used to assess whether States are meeting their human rights obligations. The solutions proposed by the State need to be assessed contextually, with particular consideration of the resources available.

[11] Inga Winkler and Virginia Roaf, "Taking the bloody linen out of the closet: menstrual hygiene as a priority for achieving gender equality", *Cardozo Journal of Law and Gender*, vol. 21, No. 1 (2015).

78. In principle, States are obliged to progressively realize economic, social and cultural rights, although there are some immediate obligations, such as non-discrimination. The human rights framework acknowledges that the full realization of economic, social and cultural rights takes time in many States. However, States have to move towards the goal of full realization as expeditiously and efficiently as possible. Where they have the capacity to realize the human rights to water and sanitation in full, they have an obligation to do so. All States must undertake deliberate, targeted and concrete steps to that end. The concept of progressive realization does not leave the realization of human rights to the States' discretion. It is qualified by an obligation to devote the maximum of available resources towards the realization of human rights. While difficult to measure in concrete terms, the principle of using the maximum available resources sets an objective standard for compliance with human rights obligations.

79. The Committee on Economic, Social and Cultural Rights relies on the standard of reasonableness and has developed criteria to assess whether the measures taken by States are reasonable, including:

> "(a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;
>
> (b) Whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner;
>
> (c) Whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations of risk" (see E/C.12/2007/1, para. 8).

80. Progressive realization has two components: progressively moving towards universal access by reaching more people and progressively moving towards better levels of service that fully meet human rights standards. Human rights do not include minimum standards such as access to a latrine at a particular distance from the home or a minimum essential amount of water. The human rights to water and sanitation must ensure an adequate standard of living, which could, for instance, require a latrine or toilet on the premises and an adequate quantity of water supplied within the home. With regard to hygiene, human rights also do not include minimum standards such as a "tippy-tap" in a household's back yard. The requirement of an adequate standard of living may include a tap within the home for hand-washing, as well as adequate facilities to practice menstrual hygiene. States that have already achieved an essential level of service have to move beyond this in order to ensure the full realization of the human rights to sanitation and water.

81. Given these sometimes competing requirements of reaching more people and achieving a level of service that fully meets human rights standards, the crucial question for States is how to set priorities for the realization of human rights. The human rights framework does not provide any definitive answers to questions of prioritization, as they need to be answered in each particular context. However, it does provide guidance on the basis of human rights concepts, in particular the obligation to target and prioritize the most disadvantaged in order to achieve substantive equality.

B. Targeting and prioritizing the most disadvantaged individuals and groups

82. Non-discrimination prohibits discriminatory treatment and discriminatory impact. Achieving substantive equality in the enjoyment of the human rights to water and sanitation is not just formal equality but actual equality in practice. It is not sufficient for States not to discriminate against certain groups or individuals, but States must take positive measures to include everyone and to redress past disadvantage and reverse patterns of inequalities. Accordingly, equality and non-discrimination have important implications for priority-setting.

83. Such targeting and prioritizing requires States to take differences into account rather than treating equally what is unequal. Treating people who are unequal the same does not achieve equality, but instead reinforces disadvantage. For persons with disabilities, article 5, paragraph 3, of the Convention on the Rights of Persons with Disabilities explicitly requires States to "take all appropriate steps to ensure that reasonable accommodation is provided". Where States adopt temporary special measures or affirmative action to achieve such prioritization and target disadvantaged groups and individuals, this is not discrimination, but rather a means to achieve substantive equality by redistributing power and resources.

84. Therefore, the key question to ask in order to achieve an equitable redistribution and to set priorities in policy-making and resource allocation is: who has been and who is being disadvantaged? Undertaking this analysis through the lens of equality and non-discrimination will demonstrate that the unserved and underserved are not randomly distributed. It will often point to communities in informal settlements, especially those that do not have security of tenure, as well as in remote rural areas. It will expose entrenched gender inequalities and the disadvantages and barriers faced by persons with disabilities, older persons and chronically ill people. It will point to patterns of neglect in service provision for communities that belong predominantly to indigenous peoples or ethnic minorities. It will bring discrimination on the basis of language, caste or religion to the fore.

85. Substantive equality requires prioritizing the provision of services to these groups and individuals who have been disadvantaged. Such redistribution is most obvious in relation to (material) resources and benefits, such as provision of water, sanitation and hygiene services. However, disadvantages and the necessary (re)distribution extend to the underlying structural factors, such as decision-making power, and the ability to make and exercise choices. Generally, a failure on the part of the State to ensure that the human rights to water and sanitation are met is also indicative of other failures, such as discrimination and inequalities in access to housing, health, food and education.

86. The obligation to target the most disadvantaged in order to achieve substantive equality provides a powerful tool for prioritization in policy-making, resource allocation and service provision. This prioritization is reinforced by the concept of core obligations used by the Committee on Economic, Social and Cultural Rights. It requires States to ensure the realization of an essential level of the human rights to water and sanitation as a matter of priority (see E/C.2/2002/11, para. 37 and E/1991/23-E/C.12/1990/8, annex III). Hence States' actions have to prioritize service provision to the unserved and underserved. Where parts of the population do not even have access to an essential level of service, States must prioritize this.

When everyone has access to at least an essential level of service, States have the obligation to progressively realize the human rights to water and sanitation in order to achieve an adequate standard of living for all.

87. The strength of the human rights framework lies in combining the priority on achieving an essential level of service for all with the concept of progressively improving services together with the framework of substantive equality. Assessing who is unserved or underserved through the lens of non-discrimination and equality demands policymakers to address the structural causes for which many people have been disadvantaged through comprehensive measures.

C. Addressing practical challenges in prioritization

88. The human rights framework is very clear in stating that States must not allow their investment strategies to favour better-off neighbourhoods over more disadvantaged communities. In many instances, disadvantaged communities that do not even enjoy an essential level of water, sanitation and hygiene services have needs that must be met immediately. Meeting these immediate needs may require more basic solutions at initial stages, even if that implies a second investment later to upgrade these services. However, such planning decisions must take great care for double investments to not represent an irresponsible use of public funds and a possible compromise of other human rights. The human rights framework does not allow States to ignore the immediate needs with promises of a long-term strategy that will eventually reach the entire population, including the most marginalized and disadvantaged individuals and communities. The human rights framework conveys an urgency to meet and prioritize these needs. In a judgement on the right to housing and related socioeconomic rights, including water and sanitation, the South African Constitutional Court articulated that the Government must adopt programmes that are balanced and flexible, and take account of short-, medium- and long-term needs.[12] In balancing these requirements, States must not neglect the parts of the population whose needs are most urgent, but must take these needs into account immediately, and must ensure that a significant number of people in desperate need are afforded relief.[13]

89. All too often, the immediate needs of those who lack access to even basic services lose out over improvements in service for those who already enjoy an essential level of service. The most recent report by WHO and UN-Water finds that funding for basic services is even decreasing and only 21 per cent of water and sanitation aid is directed to basic systems, while overall aid to the sector is increasing.[14] Investing in basic systems can be seen as a proxy for reaching unserved populations. The human rights framework demands that States reverse these trends and put greater emphasis on achieving at least essential levels of service for everyone, while keeping in mind that the goal must be to achieve an

[12] Constitutional Court of South Africa, *Government of the Republic of South Africa and Others v. Grootboom and Others*, 2000 (11) BCLR 1169 (CC), para 43.

[13] Ibid., para. 68.

[14] World Health Organization and UN-Water, *Investing in Water and Sanitation: Increasing Access, Reducing Inequalities — UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) 2014 Report* (Geneva, 2014).

adequate standard of living for everyone, using the maximum available resources efficiently to achieve that goal.

90. In many instances investments in improved levels of service, such as piped water and sewerage, have only reached the relatively well-off. Some States may not have sufficient resources to build the necessary infrastructure at a scale that would ensure universal access. However, in some cases, the extension of piped systems to city-wide coverage can be achieved over time with appropriate legislation, planning and financial management.

91. How States balance these obligations, the solutions they adopt and how they reconcile meeting immediate needs with a long-term strategy of achieving an adequate standard of living depends on the context in each country, region and community. States must address these challenges through comprehensive planning, both for the short and the long term.

92. Any decisions on the adoption of certain technologies, types of services, management models and the prioritization between different measures must be taken on the basis of active, free and meaningful participation of all those concerned. South African courts have developed the concept of "meaningful engagement", which stipulates requirements for the process of decision-making. In the context of sanitation services, a court ruled that meaningful engagement requires consultation with authorized representatives following the sharing of information and technical support, where necessary.[15] It also voiced concern that a majority within a community cannot approve arrangements in terms of which the fundamental rights of a vulnerable minority within that community will be violated.[16] In doing so, the Court highlighted the essential role of inclusion in participatory processes to avoid that the process is captured by the elite, better-off, majority group (see A/69/213).

V. Implications for monitoring

93. Monitoring can play an important role in assessing whether States meet their human rights obligations. The Committee on Economic, Social and Cultural Rights uses the concepts of core obligations and reasonableness to assess whether States comply with their human rights obligations. Human rights monitoring can provide detailed, contextualized analysis, using both qualitative and quantitative data. Indicators developed by the Office of the United Nations High Commissioner for Human Rights provide significant guidance for this process. Sectoral water, sanitation and hygiene monitoring in the context of development cannot fully monitor the progressive realization of the human rights to water and sanitation. Yet, it can provide useful tools that support human rights monitoring.

94. The WHO/UNICEF Joint Monitoring Programme, particularly as it expands to monitor the sustainable development goals, is a useful tool for monitoring some of the aspects of service provision and relevant human rights criteria, including the combination between types of services and normative contents such as availability, quality, safety, accessibility, affordability and privacy. An important development

[15] Western Cape High Court of South Africa, Cape Town, *Beja and others v. Premier of the Western Cape (21332/10)*, judgement of 29 April 2011, para. 98.

[16] Ibid., para. 99.

will be the monitoring of inequalities, which will monitor access to services by disadvantaged groups compared to more advantaged groups. It should consider different dimensions of inequalities (for example, types of services, quality, affordability) and different comparison groups (for example, urban vs. rural, levels of wealth, gender, disability and ethnicity and other grounds). The proposed sustainable development goal 10 demands the monitoring of inequalities, which could be integrated into monitoring for access to water, sanitation and hygiene.

95. In parallel, WHO and UN-Water monitor resources that flow into the sector and legislation, policies and regulatory frameworks that have been adopted. These assessments provide useful data to identify ways in which States meet their human rights obligations, particularly allowing to follow up the progressive realization of the rights.

96. The Special Rapporteur encourages States to develop more specific monitoring processes, considering the relevant indicators for their specific context. A central tenet of such processes is not only to monitor whether certain benchmarks have been met and reward States for meeting these targets, but also to measure the progress States make. Such a measurement would acknowledge that States have very different starting points and baselines for achieving universal access to water and sanitation. Looking at the Millennium Development Goals, they did not reward progress in countries that started from a very low baseline, even if their efforts were tremendous. Ethiopia, for example, improved access to sanitation from 3 per cent in 1990 to 21 per cent in 2010, thus making significant progress, but falling short of the Millennium Development Goals target.[17] One shortcoming of the Millennium Development Goals measure is that such progress is not acknowledged, and monitoring fails to give justice to the concept of the progressive realization of human rights. The Special Rapporteur encourages States to develop models that can associate a given type of service with the realization of the rights to water and sanitation, while carefully taking into consideration the context in which it is applied.

97. In the context of the sustainable development goals, for future review and follow-up, the Special Rapporteur encourages States to use and adapt existing platforms or partnerships for accountability. This may include using the universal periodic review in the Human Rights Council as a model. Such a platform should establish a country-led review process, which includes international and civil society organizations, and assesses progress and bottlenecks.

VI. Conclusion and recommendations

98. **In conclusion, this report indicates the relevance of the discussion of types of services to the realization of the human rights to water and sanitation. While the relationship between any particular technological option and its performance is largely dependent on the management model that accompanies it and the context within which it is carried out, the type of service used may, in and of itself, weigh on the realization of these rights. A vital message to retain is that the selection of type of service and management model for a given**

[17] See WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation country reports, available from: www.wssinfo.org/documents/?tx_displaycontroller[type]=country_files.

location's water, sanitation and hygiene services must be assessed in the light of the human rights standards and principles, as well as the principles of core obligations, progressive realization and use of maximum available resources.

99. **The Special Rapporteur recommends that States:**

(a) **Use the human rights framework for water, sanitation and hygiene to identify appropriate types of services and to ensure that services are available, safe, acceptable, accessible and affordable to all;**

(b) **Take into account the different concerns as to meeting human rights standards related to each type of service in planning and implementation processes. It is important for States to consider that some combinations of types of services and management models may be not compliant and might even provide outcomes far from human rights standards;**

(c) **Take into account the social, economic, political, cultural and environmental context in assessing the compliance of types of services with human rights;**

(d) **Ensure active, free and meaningful participation in the decision-making on adopting types of services and management models;**

(e) **Set priorities in a way to meet the most essential needs to ensure survival, health and dignity, considering the short-, medium- and long-term planning;**

(f) **Focus on the unserved and underserved as a matter of priority. Where parts of the population do not even have access to an essential level of service, States must prioritize the realization of their human rights. When everyone has access to at least an essential level of service, States have the obligation to progressively realize the human rights to water and sanitation in order to achieve an adequate standard of living for all;**

(g) **Prioritize groups and individuals who have been disadvantaged in the past in order to achieve substantive equality and to redress past disadvantage;**

(h) **Balance short-, medium- and long-term needs and address these through comprehensive planning. This implies not deferring immediate needs with promises of a long-term strategy that will eventually reach the entire population. Immediate needs must be addressed as a matter of priority, while minimizing the cost of any potential double investment in infrastructure;**

(i) **Develop monitoring systems to measure the progress States make, acknowledging that States have different starting points and baselines for achieving universal access to water, sanitation and hygiene, as well as to monitor the progressive reduction of inequalities;**

(j) **Use and adapt, as necessary, existing platforms or partnerships so as to ensure the accountability, future review and follow-up of the water-, sanitation- and hygiene-related sustainable development goal targets. Such a platform should establish a country-led review process that includes international and civil society organizations, and assesses progress and bottlenecks.**